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RAS Carting of Long Island, Inc. and Local 835, Brotherhood of Industrial Workers, a/w the National Organization of Industrial Trade Unions. Cases 29-CA-21282 and 29-CA-21635

May 18, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon charges filed by the Union on August 14 and December 18, 1997, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on January 9, 1998, against RAS Carting of Long Island, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint,¹ the Respondent failed to file an answer.

On April 16, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On April 20, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 29, 1998, notified the Respondent that unless an answer were received by February 4, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ Although the General Counsel's motion indicates the complaint was served by certified mail but was returned to the Regional Office unclaimed, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with its principal office and place of business in Riverhead, New York, has been engaged in the business of sanitation removal. During the 1997 calendar year, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$50,000 directly from municipalities and other entities that meet a Board test for assertion of jurisdiction, exclusive of indirect inflow or outflow. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Respondent at its Riverhead, New York facility, excluding office employees, clerical employees, guards, watchmen, foremen and supervisors as defined in the Act.

For many years and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, including the most recent, which is effective from April 1, 1996, until March 31, 1999 (the 1996-1999 agreement). At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

On July 16, 1997, the Respondent, by letter, withdrew its recognition of the Union as the exclusive collective-bargaining representative of the employees in the unit and, at all times thereafter, has failed and refused to recognize the Union as the exclusive collective-bargaining representative of the unit employees. Since around May 1997, the Respondent has failed to continue to apply all the terms and conditions of the 1996-1999 agreement by ceasing to remit, inter alia, the required contractual payments set forth in section VII, entitled *Check-Off*; schedule A, paragraph 4, entitled *Insurance*; and schedule A, paragraph 9, entitled *Retirement Fund*. These subjects relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the consent of the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has withdrawn recognition from the Union and has failed to continue to apply all the terms and conditions of the 1996–1999 agreement, we shall order it to recognize and bargain with the Union and to continue to honor all the terms of that agreement. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to remit union dues to the Union since about May 1997, we shall order the Respondent to remit union dues as required by the agreement and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments as set forth in schedule A, paragraph 4, entitled *Insurance*, and schedule A, paragraph 9, entitled *Retirement Fund* since about May 1997, we shall order the Respondent to make whole its unit employees by making all such delinquent payments, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

²To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

ORDER

The National Labor Relations Board orders that the Respondent, RAS Carting, of Long Island, Inc., Riverhead, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the Union as the exclusive collective-bargaining representative of the employees in the unit or failing or refusing to recognize the Union as the exclusive collective-bargaining representative of the unit employees.

(b) Failing to apply all the terms and conditions of the 1996–1999 agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union for the following unit employees and continue to honor all the terms of the 1996–1999 agreement:

All employees employed by the Respondent at its Riverhead, New York facility, excluding office employees, clerical employees, guards, watchmen, foremen and supervisors as defined in the Act.

(b) Remit union dues as required by the agreement and reimburse the Union for its failure to do so since about May 1997, with interest.

(c) Make all contractually required payments as set forth in schedule A, paragraph 4, entitled *Insurance*, and schedule A, paragraph 9, entitled *Retirement Fund*, that it has failed to make since about May 1997 and make the unit employees whole in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Riverhead, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the no-

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 18, 1998

Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from Local 835, Brotherhood of Industrial Workers, a/w the National Organization of Industrial Trade Unions as the exclusive collective-bargaining representative of the employees in the unit or fail or refuse to recognize the Union as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail to apply all the terms and conditions of the 1996–1999 agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with the Union for the following unit employees and continue to honor all the terms of the 1996–1999 agreement:

All employees employed by us at our Riverhead, New York facility, excluding office employees, clerical employees, guards, watchmen, foremen and supervisors as defined in the Act.

WE WILL remit union dues as required by the 1996–1999 agreement and reimburse the Union for our failure to do so since about May 1997, with interest.

WE WILL make all contractually required payments as set forth in schedule A, paragraph 4, entitled *Insurance*, and schedule A, paragraph 9, entitled *Retirement Fund*, of the 1996–1999 agreement with the Union that we have failed to make since about May 1997 and WE WILL and make the unit employees whole in the manner set forth in a decision of the National Labor Relations Board.

RAS CARTING OF LONG ISLAND, INC.